

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 990 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

DOSHI ENTERPRISE

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH VYAS FOR MR DN PANDYA for Petitioner
MR SS PATEL AGP for respondent No.1 - State
MS PJ DAWAWALA for respondent NO.4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 05/09/2000

ORAL JUDGEMENT

By this application under Article 226 of the
Constitution of India, the petitioner calls in question
the legality and validity of the order alleged to have
been delivered on 29th October, 1990 by the Additional
Chief Secretary, Revenue Department (Appeals),

Gandhinagar.

2. The facts which led the present petitioner to prefer this petition may in brief be stated. Within the village Vadali in Mahuva Taluka of Bhavnagar District, there is a Government land bearing Survey Nos.111/5 and 111/6, ad-measuring about 9700 sq.mtrs. The same is the moor land. The same was leased to the Gujarat Agro-Industries Corporation Ltd., the respondent NO.4 on 13th March, 1974. The respondent NO.4 had taken the land on lease for constructing the godowns where in Onions of the farmers were to be stored. The respondent NO.4 constructed the godowns but unfortunately the superstructure collapsed because of violent cyclone, and thereafter it was financially found unwise to invest huge amount and construct the godown again. Taking the consent of the Collector, therefore, the land was let to the present petitioner. The petitioner after being put into the possession of the land, constructed the godown investing nearly about 6.5 lacs. The petitioner is using the godown for the purpose of storing the Onion. In the meantime, the Collector passed the order on 9/21/1987 enabling the respondent NO.4 to sell the leasehold rights. On 1/3/1989, the Government decided to review or revise the order passed by the Collector on 9th February, 1987. A notice was then issued and the Additional Chief Secretary, Revenue Department (Appeals), as alleged, on 29th October, 1990, passed the impugned order quashing and setting aside the order of the Collector dtd. 9th February, 1987, whereby the leasehold rights were permitted to be sold to the petitioner. The petitioner who had constructed the godown and was using the same for the last several years investing huge amounts and developing the land, was stunned by the order passed in Revision. This petition is, therefore, filed challenging the legality and validity of the said order.

3. The learned advocate representing the petitioner contends that it was highly unjust and improper on the part of the Revisional Authority to take the matter in revision and quash and set aside the order after considerable long time namely about two to three years. Such revisional powers ought to have been exercised within a reasonable period. The impugned order is also assailed on the ground that proper opportunity to submit was not given.

4. Having heard the learned advocates for the parties, it is not necessary to dwell upon all the grounds requiring factual investigation and also the point of limitation on which the Revision Application

sought to be struck down as the petition can well be disposed of on one point going to the root of the case.

5. This Court can exercise Writ Jurisdiction, if there is an error in decision making process and cannot enter into the merits of the decision. In the case on hand, it is contended that the Revisional Authority though preferred to rely upon the sale instances for assessment of the prices and the Government Circulars and Directions issued from time to time in drawing conclusion and passing the impugned order, did not bring the same to the notice of the petitioner for making necessary submissions and keeping the petitioner in dark thereof, it quashed and set aside the order. Such contention is found to be the quicksand by the learned A.G.P. Though he combed the record but failed to find out any thing from the record so as to refute the contention of the petitioner. Perusing impugned order, it is clear that the petitioner was not called upon to submit his say on all those materials and documents on which the Revisional Authority has placed reliance for drawing its conclusions. The petitioner, in view of the fact is condemned unheard. It is a cardinal principle of natural justice that the party likely to be affected by the order must be given the chance to submit his say and if that is not done, the order passed, will be bad in law and must on that count be quashed. In the case on hand, when the order is passed without affording the opportunity to submit on the aforesaid documents, the order is required to be quashed and set aside with the direction to the Revisional Authority to hear the parties afresh, consider the materials on record and then pass appropriate order in accordance with law.

6. For the aforesaid reasons, the application is allowed. The impugned order, copy of which is produced at Annexure-G is hereby quashed and set aside. The Additional Chief Secretary, Revenue Department (Appeals), Gandhinagar is hereby directed to hear the petitioner and other likely to be affected, afresh and pass appropriate orders in accordance with law considering every material placed before him and affording reasonable opportunity to the petitioner and other concerned to submit. Rule accordingly made absolute.

(H.R. SHELAT, J.)